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**IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CENTER FOR BIOLOGICAL
DIVERSITY; SAN PEDRO ALLIANCE;
ROBIN SILVER;

Plaintiffs,

v.

KATHLEEN M. HOBBS, in her capacity as
governor of Arizona; ARIZONA
DEPARTMENT OF WATER
RESOURCES; THOMAS BUSCHATZKE,
in their capacity as Director of the Arizona
Department of Water Resources,

Defendants.

Case No.

**VERIFIED COMPLAINT FOR
SPECIAL ACTION,
ALTERNATIVELY
DECLARATORY AND
INJUNCTIVE RELIEF**

Pursuant to Rule 4, *Arizona Rules of Procedure for Special Actions*, A.R.S. §§ 12-2021, 12-1831, and 12-1801, Plaintiffs Center for Biological Diversity, San Pedro Alliance, and Robin Silver, by and through undersigned counsel, allege as follows:

SUMMARY OF THE CASE

1. Kathleen M. Hobbs, as governor of Arizona, the Arizona Department of Water Resources (“ADWR”), and Thomas Buschatzke, the current director of ADWR (“Director”) (collectively, “Defendants”), have failed to perform their mandatory duty to conduct a review of the Upper San Pedro Basin (“Basin”) to determine whether active management practices are required to preserve long-term, reliable groundwater supplies in the Basin.

2. Defendants have also abused their discretion by ignoring incontrovertible scientific data showing that groundwater is threatened in the Basin and thus failing to initiate proceedings to designate the Basin as a subsequent active management area (“AMA”) pursuant to A.R.S. § 45-412 *et seq.*

3. Groundwater use in the Basin exceeds an amount necessary to preserve the existing supply of groundwater for future needs.

4. Absent the Court’s intervention, residents of the Basin are unlawfully denied the benefit of active management practices set out in Arizona’s Groundwater Code (A.R.S. § 45-401 *et seq.*).

5. Defendants’ failure to perform their mandatory duty “to conserve, protect and allocate the use of groundwater resources of the state” (A.R.S. § 45-401) by failing to conduct a review of the Basin and/or to exercise their discretion to initiate proceedings to designate the Basin as a subsequent AMA is an abandonment of their duties as the steward of Arizona’s water future.

6. Plaintiffs thus bring their action to compel Defendants to comply with their statutory obligations to protect the long-term, reliable water supply in the Basin.

7. Special action relief is appropriate here because Plaintiffs have no other remedy at law to compel Defendants to perform their mandatory duties.

8. The Court should grant special action relief compelling Defendants to perform their non-discretionary duties and to exercise their discretionary duties based on incontrovertible scientific data showing that the Basin will run out of a long-term, reliable water supply in the absence of active management practices and other protections afforded by the Groundwater Code.

PARTIES

9. Plaintiff Center for Biological Diversity (“Center”) is a non-profit membership corporation with its main office in Tucson, Arizona. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center is actively involved in species and habitat protection issues

1 worldwide, including throughout the southwestern United States, and actively advocates for
2 increased protections for species and their habitats and landscape connectivity in Arizona
3 and specifically in the Basin.

4 10. Plaintiff the San Pedro Alliance is a coalition of local, Arizonan, regional,
5 national and international member organizations, some of whose members reside in the
6 Basin. The Alliance works to protect and safeguard the San Pedro River. In a letter dated
7 September 20, 2023, the Alliance submitted a written request to the Director, asking for the
8 designation of the Basin as a subsequent AMA. The Director failed to respond to this
9 request.

10 11. Plaintiff Robin Silver is a landowner in the Basin. He is a co-founder and
11 board member of the Center and a board member of the San Pedro Alliance.

12 12. Many of Plaintiffs' members and board members live and own property in
13 the Basin, and rely on a long-term, reliable supply of accessible groundwater in the Basin.

14 13. Defendant Kathleen M. Hobbs is the governor of Arizona and is responsible
15 for the actions and inactions of state agencies under her authority, including ADWR.
16 Governor Hobbs appointed the Director who serves at her pleasure. A.R.S. § 45-102(C).

17 14. Defendant ADWR is a state agency and is a public body subject to a writ of
18 mandamus under the common law, the Rules of Procedure for Special Actions, and A.R.S.
19 §§ 12-2021 *et seq.*

20 15. Defendant Thomas Buschatzke is the current Director of ADWR, tasked with
21 authority to designate AMAs by A.R.S. § 45-412 *et seq.* He is a public officer subject to a
22 writ of mandamus under the common law, the Rules of Procedure for Special Actions, and
23 A.R.S. §§ 12-2021 *et seq.*

24 **JURISDICTION AND VENUE**

25 16. This Court has jurisdiction over this action pursuant to A.R.S. §§ 12-2021,
26 12-123, 12-1801, 12-1803, 12-1831, as well as Ariz. R. P. Spec. Act. 4(a).

27 17. Venue in Maricopa County is proper pursuant to Ariz. R. P. Spec. Act. 4(b).
28

1 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

2 **I. Defendants are responsible for protecting Arizona’s groundwater**

3 18. The Arizona Legislature has made its intent clear: “The legislature finds that
4 the people of Arizona are dependent in whole or in part upon groundwater basins for their
5 water supply and that in many basins and sub-basins *withdrawal of groundwater is greatly*
6 *in excess of the safe annual yield* and that this is *threatening to destroy* the economy of
7 certain areas of this state and is *threatening to do substantial injury* to the general economy
8 and welfare of this state and its citizens.” A.R.S. § 45-401(A) (emphasis added).

9 19. The Legislature therefore “declared” it is “the public policy of this state that
10 in the interest of protecting and stabilizing the general economy and welfare of this state
11 and its citizens *it is necessary to conserve, protect and allocate* the use of groundwater
12 resources of the state and to provide a framework for the *comprehensive management and*
13 *regulation* of the withdrawal, transportation, use, conservation and conveyance of rights to
14 use the groundwater in this state.” A.R.S. § 45-401(B) (emphasis added).

15 20. The Legislature delegated authority to ADWR and the Director: “The director
16 has *general control and supervision* of surface water, its appropriation and distribution, and
17 of *groundwater* to the extent provided by this title.” A.R.S. § 45-103(B) (emphasis added).

18 21. A.R.S. § 45-105(B)(1) mandates that the “director *shall...* exercise and
19 perform all powers and duties vested in or imposed on the department and adopt and issue
20 rules necessary to carry out the purposes of this title.” (emphasis added).

21 **II. Protections offered by active management practices preserve groundwater**

22 22. A.R.S. § 45-411 established four initial active management areas in Arizona.

23 23. A.R.S. § 45-412(A) allows the Director to designate an area as a subsequent
24 active management area if the director determines that *inter alia* that “active management
25 practices are necessary to preserve the existing supply of groundwater for future needs.”

26 24. A.R.S. § 45-412(C) mandates that the director “shall periodically review all
27 areas which are not included in an active management area to determine whether such areas
28 meet any of the criteria for active management areas prescribed in this section.”

1 25. The protections offered by the Groundwater Code’s designation of a basin as
2 an AMA serve to manage finite groundwater resources, and thus protect groundwater levels
3 from further decline.

4 26. Without the protections offered by the Groundwater Code’s designation of a
5 basin as an AMA, there are very few constraints on continued depletion of groundwater
6 levels. *See*, for example, A.R.S. § 45-453.

7 27. The Groundwater Code heavily regulates groundwater withdrawals. *See* Title
8 45, Chapter 2, Articles 2, 3, 4, 5, 6, 7, 8, 8.1, 9, 10, 11, 12.

9 28. In particular, the Groundwater Code contains more rigorous provisions for
10 new subdivisions inside AMAs. The Code prohibits the sale or lease of subdivided land in
11 an AMA without demonstration of an assured water supply (“AWS”). A.R.S. § 45-576.

12 29. To obtain a certificate of AWS, the statute requires a demonstration of: (1)
13 Physical, legal and continuous water availability for 100 years; (2) Compliance with water
14 quality standards; (3) Financial capability to construct the delivery system and related
15 features; (4) Consistency with the AMA’s management plan; and (5) Consistency with the
16 AMA’s management goal. A.R.S. § 45-576(A) and (M).

17 30. Also, the Code requires that “management plans” and “management goals”
18 must be established for each AMA. A.R.S. §§ 45-562 and 45-563.

19 31. In safe-yield AMAs, consistency with the management goal requires the
20 applicant to show that water demand will be met primarily with non-groundwater supplies.

21 32. Within an AMA, an authority (legal right or permit) is required in order to
22 pump groundwater from non-exempt wells (wells that pump more than 35 gallons per
23 minute). A.R.S. § 45-512.

24 33. A.R.S. § 45–563(A) requires the Director to promulgate management plans
25 for each AMA for five management periods, and provides that “the plans shall include a
26 *continuing mandatory conservation program* for all persons withdrawing, distributing or
27 receiving groundwater designed to achieve reductions in withdrawals of groundwater.”

28 34. ADWR recognizes and touts the benefits of AMAs. “The 1980 Arizona

1 Groundwater Code recognized the need to aggressively manage the state's finite
2 groundwater resources to support the growing population and economy.”¹ Because of
3 current AMAs, “Municipal Use – 87% of statewide water use is under mandatory
4 conservation program requirements,” and “Industrial Use – 72% of statewide water use is
5 under mandatory conservation program requirements.”²

6 35. Groundwater in the Basin will benefit from, and irretrievable harm be
7 prevented by, active management practices being implemented in the Basin, as enforced by
8 the designation of the Basin as a subsequent AMA.

9 **III. The Basin and its human community**

10 36. The Basin is located in southeastern Arizona about 50 miles southeast of
11 Tucson. The Basin boundaries were designated by ADWR on July 20, 1982, pursuant to
12 A.R.S. §45-403 and §45-404.

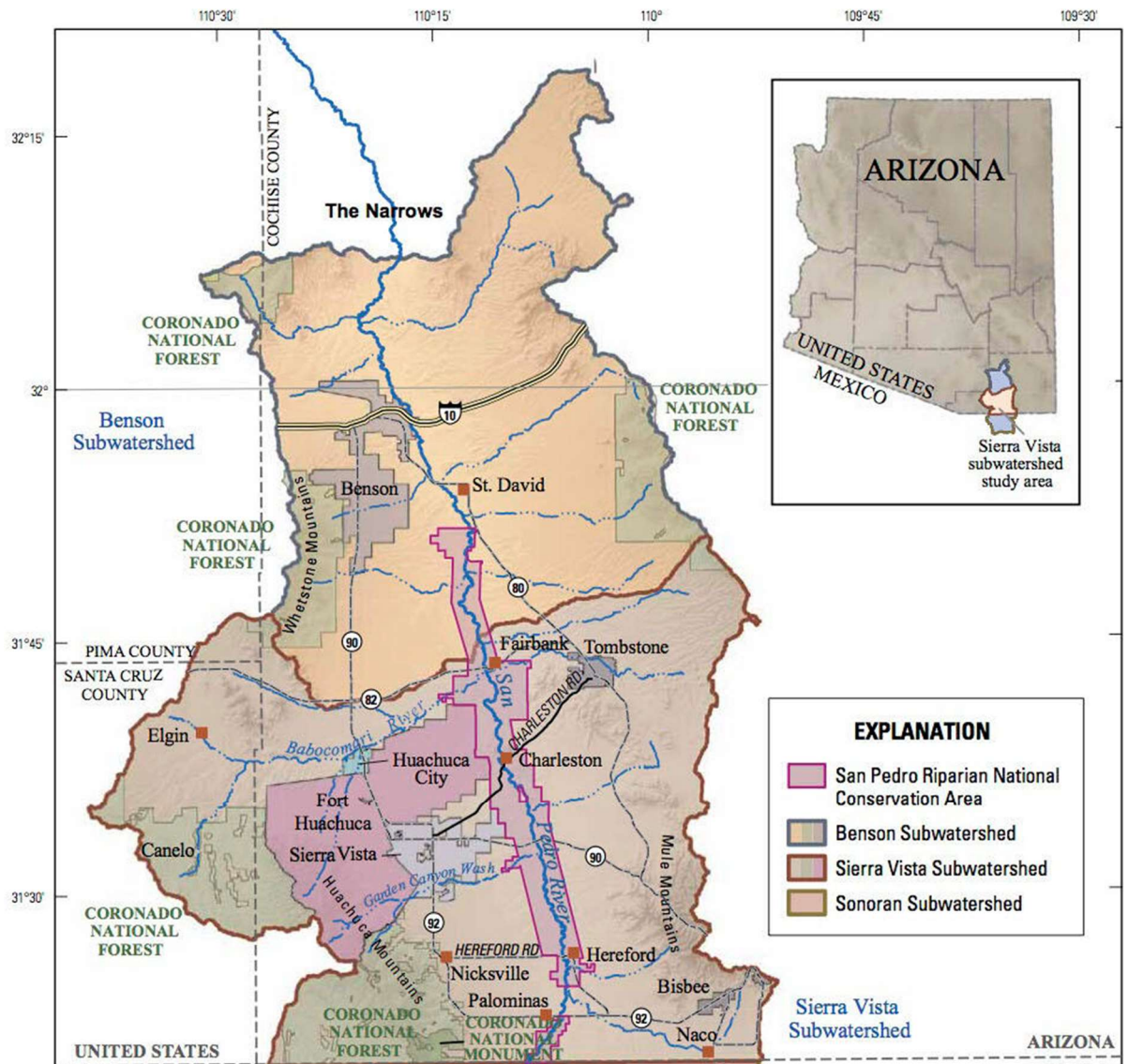
13 37. The Basin boundaries are defined by ADWR as “the surface watershed of the
14 San Pedro River from the Republic of Mexico downstream to the area referred to as ‘The
15 Narrows’ north of Benson, and in addition, the upper drainage areas of Hot Springs and
16 Kelsey Canyons which enter the San Pedro River north of ‘The Narrows.’”

17 38. The boundaries of the Basin are the outer boundaries of the following “Map
18 of the Upper San Pedro Basin and the Sierra Vista Subwatershed” produced by the United
19 States Geological Survey (USGS):³

26 ¹ See <https://www.azwater.gov/ama/active-management-area-overview>.

27 ² See <https://www.azwater.gov/sites/default/files/2022-12/AMAFACTSHEET2016%20%281%29.pdf>

28 ³ See <https://www.usgs.gov/media/images/map-upper-san-pedro-basin-and-sierra-vista-subwatershed>



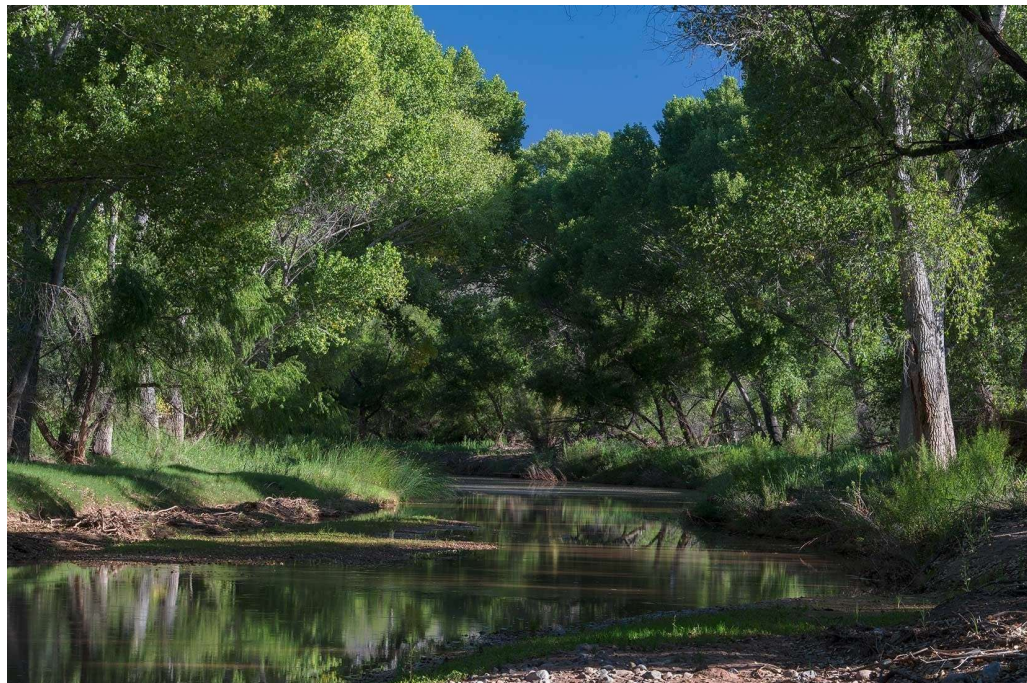
39. The Basin includes the communities of Sierra Vista, Benson, Bisbee, Tombstone, Huachuca City, and the Fort Huachuca Military Reservation, with a current population of approximately 100,000.

40. Growing, completely groundwater-dependent residential communities are prevalent and planned in the Basin, including at Sierra Vista, where there is a new planned community of almost 7,000 homes using approximately 4,800 acre-feet/year for and at Benson, where there is a new planned community of 28,000 homes. See photograph looking northeast over Sierra Vista and the Basin taken from the Fort Huachuca Mountains

1 (photograph credited to Dr. Robin Silver):



13
14 41. The San Pedro River that flows through the heart of the Basin is the last of
15 the undammed, free-flowing rivers in the desert Southwest. *See* photograph of the San Pedro
16 River in the Basin (photograph credited to Dr. Robin Silver):



42. The San Pedro River supports a rich riparian corridor that is critical to local and regional biological diversity.

43. The Basin is located in an arid region, the landscape of which is characterized by lowland deserts interspersed with isolated mountain ranges.

44. Groundwater is currently the sole source of water for human residents in the Basin.

45. Groundwater also sustains the health of the riparian ecosystem and provides base flows for the San Pedro River.

46. Each year, millions of songbirds migrate between their wintering ground in southern Mexico and Central America, and their summer breeding areas in the U.S. and Canada. In order to cross the landscapes of the Sonoran and Chihuahuan Deserts successfully, these songbirds congregate along some of the few north-south corridors where they can find food, water, and shelter. The San Pedro River is one of the last of these corridors.

47. Over the last 100 years, human settlement and activity in the Basin have been sustained by pumping from the aquifer that lies beneath the Basin.

48. Human activities, especially groundwater withdrawal, have contributed to the degradation of the San Pedro ecosystem and the alteration of the river's flow from a largely perennial to a largely ephemeral stream system.

49. Human communities that have flourished in the Basin have only been able to do so because of the availability of surface and groundwater.

50. The groundwater aquifer that currently solely supports the Basin sustains the municipal, agricultural, and industrial land uses that exist in the Basin.

51. The federal government is the largest single user of groundwater in the Basin.

IV. The San Pedro Riparian National Conservation Area

52. The Basin includes the 55,000-acre San Pedro Riparian National Conservation Area ("SPRNCA").

53. In 1988, Congress established the SPRNCA to "protect the riparian area and

1 aquatic, wildlife, archaeological, paleontological, scientific, cultural, educational and
2 recreational resources of the public lands surrounding the San Pedro River.” *See* 16 U.S.C.
3 § 460xx-1(a).

4 54. The SPRNCA spans the San Pedro River in the Basin.

5 55. Congress created an accompanying federal reserved water right to fulfill
6 SPRNCA’s conservation purpose and ordered the Secretary of the Interior to “file a claim
7 for the quantification of such rights in an appropriate stream adjudication.” *Id.* § 460xx-
8 1(d).

9 56. On August 24, 2023, Maricopa County Superior Court in the Gila River
10 stream adjudication issued an order quantifying federal reserved water rights for the
11 SPRNCA (“Order”).⁴

12 57. SPRNCA’s quantified water rights are based on mean monthly surface water
13 flows as well as a “federal reserved water right to [described] groundwater elevations at
14 nine monitoring wells.” Order, p. 54-55.

15 58. “In the scheme of priorities, the claims of the federal government (based on
16 its vast holdings of national forests, military reservations, and recreational areas) and of the
17 Indians rank high. While the amount of water actually used by these entities may have been
18 negligible until recent times, the magnitude of the right to use water on these lands has been
19 far from negligible.” *United States v. Superior Ct. In & For Maricopa Cnty.*, 144 Ariz. 265,
20 270 (1985).

21 59. The court found that “Federal rights necessitate a gallon-for-gallon reduction
22 in the amount of water available for water-needy state and private appropriators.” *Id.*
23 (internal citations omitted).

24 60. The Order establishes that federal reserve water rights must be accounted for
25 and included in any evaluation of water availability in the Basin.

26
27 ⁴ *See* Order Quantifying Federal Reserved Water Rights for San Pedro Riparian National
28 Conservation Area dated August 24, 2023, issued in Maricopa County Case No. W1-11-
232, available at
[https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/
W1-11-232-Brain-OR-fed-res-rights-8-25-23.pdf](https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/W1-11-232-Brain-OR-fed-res-rights-8-25-23.pdf).

1 61. The Order also established specific well levels that must be maintained to
2 fulfill federal reserve water rights.

3 62. At least two of those well levels already fall below mandated levels, thereby
4 establishing that the Sierra Vista Sub-watershed of the Basin is overdrawn, and federal
5 reserved water rights are being violated.

6 63. Overdrawing of the aquifer and violating federal reserved water rights is also
7 occurring in the Benson Sub-watershed of the Basin.

8 **V. Considerable evidence shows groundwater is declining in the Basin**

9 64. ADWR is in possession of data showing that groundwater is declining in the
10 Basin.

11 65. According to ADWR's website, "ADWR staff collected 764 water-level
12 measurements in Water Year 2007 and 523 measurements in WY 2019." ADWR concluded
13 that "[t]he report shows *considerable evidence of groundwater declines* in many areas" in
14 the Basin.⁵ (emphasis added).

15 66. "Depth to water" increased (that is, the water levels were found to
16 have *declined*) in 77.5 percent of wells; it remained unchanged in 3.7 percent of wells; and,
17 it decreased (that is, the water levels were found to have risen) in 18.8 percent of wells. *Id.*

18 67. In 2016, in a report entitled "Hydrological Conditions and Evaluation of
19 Sustainable Groundwater Use in the Sierra Vista Subwatershed, Basin, Southeastern
20 Arizona" ("2016 USGS Report"),⁶ the United States Geological Service ("USGS") looked
21 at water conditions as of 2012 and warned that "[g]roundwater available for the
22 environmental needs of the subwatershed, especially for discharge to the San Pedro River
23 (base flow), *has been declining since at least the 1930s.*" 2016 USGS Report p. 10 (internal
24 citations omitted) (emphasis added).

25 68. The 2016 USGS Report concluded that "[s]ustainable use of groundwater is
26 thus dependent, at a minimum, on *stabilizing groundwater discharge into the San Pedro*
27 *River.*" *Id.* (emphasis added).

28 ⁵ Publicly available at <https://www.azwater.gov/news/articles/2021-08-03>.

⁶ Available at https://pubs.usgs.gov/sir/2016/5114/sir20165114_v1.3.pdf.

1 69. According to the 2016 USGS Report, “[i]f pumping across the subwatershed
2 were to completely stop tomorrow, *the cone of depression would continue to spread* and its
3 effects, including *decreases in natural discharge to the riparian area and river*, would
4 continue for decades.” *Id.* at p. 77 (emphasis added).

5 70. According to the 2016 USGS Report, “[r]egional *aquifer groundwater levels*
6 in the Fort Huachuca area *are clearly in decline*, and this is interpreted as *decreasing the*
7 *tendency for groundwater to flow toward the San Pedro River.*” (*Id.* at p. 17) (emphasis
8 added).

9 71. According to the 2016 USGS Report, “[w]ithout significant mitigation
10 measures, it is likely too late already to prevent declining water levels from reaching the
11 San Pedro River riparian area from Charleston to Tombstone.” (*Id.* at p. 77) (emphasis
12 added).

13 72. The Report concluded that “there are a number of indicators that reflect
14 *degrading conditions* in other parts of the subwatershed. The vast majority of these sites
15 were found downgradient from the pumping centers of Sierra Vista and Fort Huachuca and
16 can generally be seen as *expressions of the cone of depression and capture of water* that
17 would otherwise have discharged to the riparian area and near-stream alluvial aquifer
18 near the San Pedro River. These included *consistent decreases in water levels* in many
19 regional-aquifer wells near to and downgradient of the Sierra Vista and Fort Huachuca
20 pumping centers, horizontal-gradient declines across Fort Huachuca, *long-term declines* in
21 base-flow discharge at stream-gaging stations (Charleston, Tombstone, Lower Babocomari,
22 and Palominas), increasing trends in stable isotopes indicative of *decreased groundwater*
23 *discharge* to the Babocomari River near the Lower Babocomari gaging station and to the
24 San Pedro River near Palominas, and two river reaches that have *remained essentially dry*
25 during the driest time of the year throughout the period of record.” (*Id.* at p. 78) (emphasis
26 added).

27 73. There is a direct connection between the groundwater and the SPRNCA San
28 Pedro River surface water or streamflow.

1 74. The number of wells has skyrocketed in the Basin to supply a growing
2 population, more than doubling from 3,592 wells in 1987 to 8,765 wells in 2017, according
3 to ADWR data.⁷

4 75. Sufficient water to provide for the needs of the San Pedro River within
5 SPRNCA is a metric that must be accounted for in any evaluation of the availability of
6 groundwater within the Basin. With issuance of the Order the amount of water necessary
7 to provide for SPRNCA has now been established.

8 76. That groundwater within the Basin is already being overdrawn and is over
9 allocated is established by multiple hydrological reports including Lacher (2011), Integrated
10 Hydro (2016), USGS (2017), Eastoe (2017), Meixner (2018), Lacher (2018), Eastoe (2018),
11 Integrated Hydro (2019), Eastoe (2020), and USGS (2020).

12 77. Unfortunately, wells and Certificates of Adequacy in the Basin have been
13 approved by ADWR without careful consideration of the legal availability of the
14 groundwater being pumped, including that not a single Certificate of Adequacy in the Basin
15 considered federal reserved water rights. *See Silver v. Pueblo Del Sol Water Company*, 244
16 Ariz. 553, 566, ¶ 46 (2018).

17 78. Consequently, the extraction of groundwater within the Basin is over
18 allocated and it is likely that a significant percentage of the groundwater already being
19 pumped from each well may be impairing established water rights in the Basin.

20 79. For example, in July 2012, ADWR granted a Sierra Vista developer (Pueblo
21 Del Sol Water Company) permission to remove groundwater for the building of an
22 additional 6,959 homes requiring a total annual groundwater demand of 4,870.39 acre-feet
23 per year.

24 80. ADWR failed to consider the SPRNCA rights when it evaluated Pueblo Del
25 Sol's PDS application.

26 81. And, as another example, on June 1, 2016, the City of Benson approved the
27

28 ⁷ See Governor's Water Augmentation, Innovation and Conservation Council's September
12, 2019 slideshow, available at [https://www.documentcloud.org/documents/6454263-
2019-09-12-Governors-Water-Council-presentation.html](https://www.documentcloud.org/documents/6454263-2019-09-12-Governors-Water-Council-presentation.html), p. 40-45.

development of Vigneto for 28,000 new groundwater dependent homes based on ADWR's July 14, 2008 approval of Benson's Certificate of Adequacy.

82. Just like ADWR's other Certificates of Adequacy in the Basin, Benson's July 14, 2008 Certificate failed to account for SPRNCA federal water rights even though pumping of groundwater as the result of Benson's Certificate will reduce flows to the northern SPRNCA and cause drying as established by Integrated Hydro (2016), Eastoe (2017), Eastoe (2018), and Eastoe (2020).

83. Upon information and belief, Defendants are in possession of additional scientific data, which Plaintiffs do not possess, incontrovertibly showing that residents of the Basin are unlawfully being denied the benefits of active management practices provided by Arizona's Groundwater Code.

CLAIMS FOR RELIEF

COUNT I

Special Action (A.R.S. § 12-2021) – Violation of A.R.S. § 45-412(C)

84. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

85. A.R.S. § 45-412(C) provides that "[t]he director **shall** periodically review all areas which are not included within an [AMA] to determine whether such areas meet any of the criteria for [AMA]s as prescribed in this section." (emphasis added).

86. Courts may issue a writ of mandamus to any "person [or] corporation ... on the verified complaint of the party beneficially interested, to compel, where there is not a plain, adequate and speedy remedy at law, performance of an act which the law specially imposes as a duty resulting from an office ..." A.R.S. § 12-2021.

87. Special action relief is appropriate when "the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion." Ariz. R. P. Spec. Act. 3(a).

88. Defendants have a mandatory duty to "periodically review" the Basin to determine whether it requires the protections offered by an AMA. A.R.S. § 45-412(C).

89. Defendants have failed to undertake such a review since 2005.

90. The Director refused to undertake such a review, despite a request from

1 Plaintiffs asking for such review.

2 91. The 2005 Report (which ADWR undertook pursuant to its obligations under
3 A.R.S. § 45-412(C)) was undertaken 20 years ago, on data up to 2001, which is now almost
4 25 years old.

5 92. Conditions that impact such a review have changed dramatically in the Basin.

6 93. Defendants' failure to undertake a review of the Basin violates A.R.S. § 45-
7 412(C).

8 94. Defendants' failure to undertake a review of the Basin violates Defendants'
9 duties under A.R.S. §§ 45-401(A), 45-401(B), 45-103, and 45-105(B)(1) because
10 Defendants failed to in their duty to conserve, protect and allocate the use of groundwater
11 resources in the Basin or to provide a framework for the comprehensive management and
12 regulation of the withdrawal, transportation, use, conservation or conveyance of rights to
13 use groundwater in the Basin.

14 95. Notably, the Arizona Attorney General raised concerns that the Director has
15 failed to address the need for new AMAs and thereby failed in this duty. On April 17, 2023,
16 the Arizona Attorney General wrote to the Director, taking the position that "groundwater
17 circumstances have changed greatly since 1980 [the enactment of the Groundwater Act],"
18 and that "ADWR appears not to have engaged in the analysis of potential new AMAs
19 necessary to adjust to those changes," noting that "two studies of [the Basin] in a forty-year
20 period *does not satisfy the statutory duty to periodically review* 'all areas which are not
21 included within an [AMA],' as A.R.S. § 45-412(C) requires."⁸ (emphasis added).

22 96. Plaintiffs have no other equally plain, speedy, and adequate remedy at law to
23 enforce Defendants' mandatory obligations under A.R.S. § 45-412(C).

24 97. Plaintiffs are entitled to special action relief compelling the Defendants and
25 their agents to undertake a review of the Basin to determine whether it meets the criteria for
26 active management practices as prescribed in A.R.S. § 45-412(A).

27
28 ⁸ See letter dated April 17, 2023, available at
<https://www.azag.gov/sites/default/files/2023-04/waterletter20232.pdf>.

COUNT II

Special Action (A.R.S. § 12-2021) – Violation of A.R.S. §§ 45-412(A) and 45-413(A)

98. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

99. A.R.S. § 45-412(A) provides that: “The director may designate an area which is not included within an initial active management area, pursuant to § 45-411, as a subsequent active management area if the director determines that *any* of the following exists: 1. *Active management practices are necessary to preserve the existing supply of groundwater for future needs.* 2. Land subsidence or fissuring is endangering property or potential groundwater storage capacity. 3. Use of groundwater is resulting in actual or threatened water quality degradation.” (emphasis added).

100. A.R.S. § 45-413(A) provides that, if the director proposes to designate a subsequent AMA, the director must hold a public hearing to consider “(1) whether to issue an order declaring the area an” AMA, and “(2) the boundaries and any sub-basins” of the proposed AMA.

101. A.R.S. § 45-413(C) provides that, at such public hearing, the director “shall present the factual data in their possession in support of the proposed action.”

102. Special action relief is appropriate here to require Defendants to exercise their discretion in a way that is not arbitrary or unjust and does not constitute an abuse of discretion.

103. Defendants’ failure to exercise their authority under A.R.S. §§ 45-412(A) and 45-413(A) is arbitrary action because it is unreasoning action, without consideration and in disregard of the facts and circumstances showing that active management practices are necessary to preserve the existing supply of groundwater for future needs of the Basin.

104. Defendants’ failure to exercise their authority under A.R.S. §§ 45-412(A) and 45-413(A) is an abuse of discretion because it fails to consider the relevant facts showing that active management practices are necessary to preserve the existing supply of groundwater for future needs of the Basin.

105. Defendants abused their discretion under A.R.S. § 45-412(A) by ignoring

1 scientific data showing that groundwater levels are declining in the Basin to such an extent
2 that active management practices are necessary to preserve the existing supply of
3 groundwater for future needs, and thus Defendants must exercise their discretion to consider
4 whether designation of a subsequent active management area is needed in the Basin.

5 106. As shown above, scientific data indisputably shows that groundwater levels
6 in the Basin are declining to such an extent that without active management practices the
7 existing supply of groundwater will not meet future needs of the Basin.

8 107. Defendants' failure to exercise their authority under A.R.S. § 45-412(A) is
9 arbitrary because their inaction and failure to consider the need for subsequent AMAs was
10 disregards the facts and circumstances before Defendants which incontrovertibly show that,
11 without active management practices in place, the Basin will no longer be able to support
12 the future water needs of its residents and its visitors.

13 108. Defendants' failure to exercise their authority under A.R.S. § 45-412(A) is
14 unjust because the residents of the Basin and all beneficiaries of the SPRNCA, including
15 Plaintiffs, will suffer the long-term irreversible harm that will result from the Basin
16 inevitably running out of groundwater in the absence of active management practices.

17 109. Defendants' failure to exercise their authority under A.R.S. § 45-412(A) is an
18 abuse of discretion because Defendants has failed to consider the relevant facts, as set out
19 above, which incontrovertibly show that the Basin will run out of groundwater in the
20 absence of active management practices.

21 110. The facts set out above show that "active management practices are necessary
22 to preserve the existing supply of groundwater for future needs." A.R.S. § 45-412(A).

23 111. Defendants' decision not to initiate proceedings under A.R.S. § 45-413 to
24 designate the Upper San Pedro Basin a subsequent AMA ignores substantial evidence,
25 which incontrovertibly shows that active management practices are necessary to preserve
26 the existing supply of groundwater for future needs of the Basin.

27 112. Defendants' decision not to initiate proceedings under A.R.S. § 45-413 is
28 unreasonable in light of the facts set out above.

113. Defendants’ failure to exercise their authority under A.R.S. §§ 45-412(A) and 45-413(A) violates their acknowledged duty under the Groundwater Code, as “steward of Arizona’s water future,” to “ensure long-term, reliable water supplies to support the continued economic prosperity”⁹ of the Upper San Pedro Basin.

114. Defendants' failure to initiate proceedings to designate the Upper San Pedro Basin as an AMA violates Defendants' duties under A.R.S. §§ 45-401(A), 45-401(B), 45-103, and 45-105(B)(1) because Defendants failed in their duty to conserve, protect and allocate the use of groundwater resources in the Basin or to provide a framework for the comprehensive management and regulation of the withdrawal, transportation, use, conservation or conveyance of rights to use groundwater in the Basin.

115. On September 20, 2023, Plaintiff San Pedro Alliance sent a request to the Director to designate the Basin as an AMA.

116. Plaintiffs included hydrology studies documenting the Basin aquifer overdrafting since 2005.

117. Neither the Director nor anyone from ADWR responded to the request.

118. Plaintiffs have no other adequate remedy at law to compel Defendants to exercise their authority under A.R.S. §§ 45-412(A) and 45-413(A) based on incontrovertible facts showing that active management practices are necessary to preserve groundwater in the Basin for future needs.

119. Plaintiffs are entitled to special action relief compelling the Defendants and their agents to initiate proceedings under A.R.S. § 45-413, including holding a public hearing pursuant to A.R.S. § 45-413(A) and present evidence pursuant to A.R.S. § 45-413(C) to consider whether to designate the Upper San Pedro Basin a subsequent AMA.

COUNT III

Declaratory Judgment (A.R.S. § 12-1831) and Injunctive Relief (A.R.S. § 12-1801)

Violations of A.R.S. §§ 45-412(C), 45-412(A) and 45-413(A)

⁹ See ADWR slide presentation in support of Gila Bend AMA dated January 30, 2024, p. 37, available at https://www.azwater.gov/sites/default/files/2024-01/2024.01_30%20Subsequent%20AMAs%20Presentation-forweb.pdf.

1 120. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.

2 121. Courts have authority to “declare rights, status, and other legal relations
3 whether or not further relief is or could be claimed. . . . The declaration may be either
4 affirmative or negative in form and effect; and such declarations shall have the force and
5 effect of a final judgment or decree.” A.R. S. § 12-1831.

6 122. A plaintiff may seek relief under the Uniform Declaratory Judgment Act if
7 they can show the issue is ripe and they have standing. A.R. S. § 12-1831.

8 123. Both requirements are met here. An actual and justiciable controversy exists
9 regarding Defendants’ abandonment of their duty under A.R.S. § 45-412(C) to conduct a
10 review to determine whether the Upper San Pedro Basin meets the criteria for active
11 management practices as prescribed in A.R.S. § 45-412(A), and whether he has abused their
12 discretion by failing to initiate proceedings to designate the Upper San Pedro Basin a
13 subsequent AMA.

14 124. Plaintiffs have direct standing because they are dependent on the groundwater
15 supplies that Defendants’ inaction threatens. Moreover, an organization has
16 representational standing if it has “a legitimate interest in an actual controversy involving
17 its members” and “judicial economy and administration will be promoted” by conferring
18 standing. *Armory Park Neighborhood Ass’n v. Episcopal Cmty. Servs. in Ariz.*, 148 Ariz.
19 1, 6 (1985).

20 125. Additionally, courts have authority to grant injunctions. A.R.S. § 12-1801.

21 126. Defendants have no discretion to refuse to perform their duty required by
22 A.R.S. § 45-412(C).

23 127. Defendants have abused their discretion in failing to exercise their authority
24 under A.R.S. §§ 45-412(A) and 45-413(A).

25 128. Declaratory and injunctive relief is necessary to ensure Defendants do not
26 violate the Groundwater Code.

27 129. Absent an injunction compelling Defendants and their agents to conduct a
28 review of the Upper San Pedro Basin as required by A.R.S. § 45-412(C), Plaintiffs will have

1 no means to protect the groundwater upon which they depend. This will cause irreparable
2 harm to Plaintiffs, and to the people of the Upper San Pedro Basin.

3 130. Absent an injunction compelling Defendants and their agents to initiate
4 proceedings pursuant to A.R.S. § 45-413, Plaintiffs will have no means to protect the
5 groundwater upon which they depend. This will cause irreparable harm to Plaintiffs, and to
6 the people of the Basin.

7 **PRAYER FOR RELIEF**

8 WHEREFORE Plaintiffs respectfully request that this Court order the following relief:

9 A. Granting Plaintiff's request for a declaratory judgment and injunction
10 declaring that Defendants' failure to conduct a review of the Upper San Pedro Basin
11 pursuant to A.R.S. § 45-412(C) is unlawful and compelling Defendants to comply with
12 A.R.S. § 412(C), by a date certain no more than one year after the order is issued.

13 B. Granting Plaintiff's request for special action relief in the form of an order
14 compelling ADWR to conduct a review of the San Pedro River Basin pursuant to A.R.S. §
15 45-412(C) to determine whether the San Pedro River Basin meets the criteria for a
16 subsequent AMA, by a date certain as detailed in section A above.

17 C. Granting Plaintiff's request for a declaratory judgment and injunction
18 declaring that Defendants' failure to initiate proceedings pursuant to A.R.S. § 45-413 is
19 unlawful and compelling Defendants to exercise their authority under A.R.S. §§ 45-412(A)
20 and 45-413(A) by a date certain as detailed in section D below.

21 D. Granting Plaintiff's request for special action relief in the form of an order
22 compelling Defendants to initiate proceedings pursuant to A.R.S. § 45-413(A) to designate
23 the Upper San Pedro Basin a subsequent active management area, which order will include:

- 24 1. That the Director must hold a public hearing pursuant to A.R.S. § 45-413 by
25 a date certain no more than six months after the order is issued;
- 26 2. That, prior to the public hearing, the Director must collect factual data relating
27 to groundwater rates of decline in the Basin, including but not limited to a hydrology
28 review of the Basin, statistical review of groundwater level data, groundwater

1 demands from municipal, industrial, agricultural, and all other uses, including the
2 federal government at both Fort Huachuca and the SPRNCA, and facts relevant to
3 each factor in A.R.S. § 45-412(A), to be presented at the public hearing pursuant to
4 A.R.S. § 45-413(C); and

5 3. An order that, if, after the public hearing, the Director does not designate the
6 Basin a subsequent AMA, the Director must issue written findings justifying why
7 the Basin does not meet the standards set out in A.R.S. § 45-412(A) by a date certain,
8 no more than three months after the hearing required under by section D.1 above.

9 E. An order directing Defendants to pay the Plaintiffs' reasonable attorneys' fees
10 and costs pursuant to A.R.S. § 12-341, 12-348, 12-2030, A.R.S. § 12-1840, Ariz. R. P. Spec.
11 Act. 4(g), or any other applicable provision of law or equitable principle, including the
12 attorney general doctrine; and

13 F. Grant the Plaintiff such other and further relief as the Court deems just and
14 proper.

15 DATED this 24th day of June, 2024.

16 **HOFMEYR LAW, PLLC**

17 /s/ Adriane J. Hofmeyr

18 Adriane J. Hofmeyr

19 *Attorney for Plaintiff*

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I am a co-founder and current board member of Plaintiffs Center for Biological Diversity and San Pedro Alliance. I have read the foregoing Verified Complaint for Special Action, Declaratory and Injunctive Relief and, to the best of my knowledge, information and belief, the statements made therein are true and correct.

Executed this 24th day of June 2024.

Oliver Price

Attorney: Adriane J. Hofmeyr
Address: 3849 E. Broadway Blvd., #323
City, State, Zip Code: Tucson, Arizona 85716
Telephone: (520)477-9035
Email Address: Filings@hofmeyrlaw.com
Representing [] Self or [X] Attorney for: Plaintiff(s)
Lawyer's Bar Number: 025100

For Clerk's Use Only

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CENTER FOR BIOLOGICAL
DIVERSITY; SAN PEDRO
ALLIANCE; ROBIN SILVER
Plaintiff(s)

Case Number: _____

SUMMONS

v.

KATHLEEN M. HOBBS, in her
capacity as governor of Arizona;
ARIZONA DEPARTMENT OF
WATER RESOURCES; THOMAS
BUSCHATZKE, in their capacity as
Director of the Arizona Department of
Water Resources,
Defendant(s)

WARNING: This is an official document from the court that affects your rights. Read this carefully. If you do not understand it, contact a lawyer for help.

FROM THE STATE OF ARIZONA TO: KATHLEEN M. HOBBS

Name of Defendant

1. **A lawsuit has been filed against you.** A copy of the lawsuit and other court papers are served on you with this “*Summons*”.
2. If you do not want a judgment or order taken against you without your input, you must file an “*Answer*” or a “*Response*” in writing with the court and pay the filing fee. If you do not file an “*Answer*” or “*Response*” the other party may be given the relief requested in his/her Petition or Complaint. To file your “*Answer*” or “*Response*” take, or send, the “*Answer*” or “*Response*” to the:
 - Office of the Clerk of the Superior Court, 201 West Jefferson Street, Phoenix, Arizona 85003- 2205 *OR*
 - Office of the Clerk of the Superior Court, 18380 North 40th Street, Phoenix, Arizona 85032 *OR*
 - Office of the Clerk of Superior Court, 222 East Javelina Avenue, Mesa, Arizona 85210-6201 *OR*
 - Office of the Clerk of Superior Court, 14264 West Tierra Buena Lane, Surprise, Arizona, 85374.

Mail a copy of your “*Response*” or “*Answer*” to the other party at the address listed on the top of this Summons.

3. If this “Summons” and the other court papers were served on you by a registered process server or the Sheriff, within the State of Arizona, your “Response” or “Answer” must be filed within TWENTY (20) CALENDAR DAYS from the date you were served, not counting the day you were served. If this “Summons” and the other papers were served on you by a registered process server or the Sheriff outside the State of Arizona, your Response must be filed within THIRTY (30) CALENDAR DAYS from the date you were served, not counting the day you were served. Service by a registered process server or the Sheriff is complete when made. Service by Publication is complete thirty (30) days after the date of the first publication.
4. You can get a copy of the court papers filed in this case from the Plaintiff at the address at the top of this paper, or from the Clerk of the Superior Court’s Customer Service Center at:

Case Number: _____

- 601 West Jackson, Phoenix, Arizona 85003
 - 18380 North 40th Street, Phoenix, Arizona 85032
 - 222 East Javelina Avenue, Mesa, Arizona 85210
 - 14264 West Tierra Buena Lane, Surprise, Arizona 85374.
5. Requests for reasonable accommodation for persons with disabilities must be made to the office of the judge or commissioner assigned to the case, at least three (3) judicial days before your scheduled court date.
6. Requests for an interpreter for persons with limited English proficiency must be made to the office of the judge or commissioner assigned to the case at least ten (10) judicial days in advance of your scheduled court date.

SIGNED AND SEALED this date:

CLERK OF SUPERIOR COURT

By _____
Deputy Clerk

Attorney: Adriane Hofmeyr
Address: 3849 E. Broadway Blvd., #323
City, State, Zip Code: Tucson, Arizona 85716
Telephone: (520)477-9035
Email Address: Filings@hofmeyrlaw.com
Representing [] Self or [X] Attorney for: Plaintiff(s)
Lawyer's Bar Number: 025100

For Clerk's Use Only

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CENTER FOR BIOLOGICAL
DIVERSITY; SAN PEDRO
ALLIANCE; ROBIN SILVER
Plaintiff(s)

Case Number: _____

SUMMONS

v.

KATHLEEN M. HOBBS, in her
capacity as governor of Arizona;
ARIZONA DEPARTMENT OF
WATER RESOURCES; THOMAS
BUSCHATZKE, in their capacity as
Director of the Arizona Department of
Water Resources,
Defendant(s)

WARNING: This is an official document from the court that affects your rights. Read this carefully. If you do not understand it, contact a lawyer for help.

FROM THE STATE OF ARIZONA TO: THOMAS BUSCHATZKE

Name of Defendant

1. **A lawsuit has been filed against you.** A copy of the lawsuit and other court papers are served on you with this “*Summons*”.
2. If you do not want a judgment or order taken against you without your input, you must file an “*Answer*” or a “*Response*” in writing with the court and pay the filing fee. If you do not file an “*Answer*” or “*Response*” the other party may be given the relief requested in his/her Petition or Complaint. To file your “*Answer*” or “*Response*” take, or send, the “*Answer*” or “*Response*” to the:
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6. Requests for an interpreter for persons with limited English proficiency must be made to the office of the judge or commissioner assigned to the case at least ten (10) judicial days in advance of your scheduled court date.

SIGNED AND SEALED this date:

CLERK OF SUPERIOR COURT

By _____
Deputy Clerk

Attorney: Adriane J. Hofmeyr
Address: 3849 E. Broadway Blvd., #323
City, State, Zip Code: Tucson, Arizona 85716
Telephone: (520)477-9035
Email Address: Filings@hofmeyrlaw.com
Representing [☐] Self or [X] Attorney for: Plaintiff(s)
Lawyer's Bar Number: 025100

For Clerk's Use Only

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

CENTER FOR BIOLOGICAL
DIVERSITY; SAN PEDRO
ALLIANCE; ROBIN SILVER
Plaintiff(s)

Case Number: _____

v.

SUMMONS

KATHLEEN M. HOBBS, in her
capacity as governor of Arizona;
ARIZONA DEPARTMENT OF
WATER RESOURCES; THOMAS
BUSCHATZKE, in their capacity as
Director of the Arizona Department of
Water Resources,
Defendant(s)

WARNING: This is an official document from the court that affects your rights. Read this carefully. If you do not understand it, contact a lawyer for help.

FROM THE STATE OF ARIZONA TO: ARIZONA DEPARTMENT OF WATER RESOURCES

1. **A lawsuit has been filed against you.** A copy of the lawsuit and other court papers are served on you with this “*Summons*”.
2. If you do not want a judgment or order taken against you without your input, you must file an “*Answer*” or a “*Response*” in writing with the court and pay the filing fee. If you do not file an “*Answer*” or “*Response*” the other party may be given the relief requested in his/her Petition or Complaint. To file your “*Answer*” or “*Response*” take, or send, the “*Answer*” or “*Response*” to the:
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SIGNED AND SEALED this date:

CLERK OF SUPERIOR COURT

By _____
Deputy Clerk